ANNEX

Assessment by the Director of the United Nations Mission for the Verification of Human Rights and of Compliance with the Commitments of the Comprehensive Agreement on Human Rights in Guatemala of the resources required for the verification of the human rights aspects of the Agreement on Identity and Rights of Indigenous Peoples and other activities of the Mission

I. INTRODUCTION

1. The Agreement on Identity and Rights of Indigenous Peoples between the Government of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca (URNG) (hereinafter "the Agreement") was signed at Mexico City on 31 March 1995. The Agreement, which represents an important forward step in the Guatemalan peace process, was conveyed by the Secretary-General to the President of the General Assembly and to the President of the Security Council by letters dated 5 April 1995 (A/49/882-S/1995/256).

2. The Agreement contains a significant number of commitments by the Government to eliminate discrimination against indigenous peoples, who comprise more than 60 per cent of the Guatemalan population, and to recognize and promote their rights. It calls for a number of constitutional as well as legal and administrative reforms, and for the establishment of new structures at both national and regional levels to render those indigenous rights effective.

3. Substantive issues covered by the Agreement include the identity of indigenous peoples; the struggle against discrimination in both law and practice; rights of indigenous women; the promotion of international instruments concerning indigenous rights and the elimination of discrimination; cultural rights (including language, place names, spirituality, temples and ceremonial centres, dress, science and technology, education and the means of mass communication); and civil, political, social and economic rights (including respect for and promotion of indigenous communal organizations and authorities, the mechanisms for administrative regionalization, participatory mechanisms at all levels, customary law and land rights).

4. In certain key areas the Agreement provides for joint commissions, to be composed of an equal number of representatives of the Government and representatives of indigenous organizations. The role of these joint commissions is to carry out preparatory work for the design of reforms and institutional arrangements envisaged in the Agreement. The requirement for participation by indigenous peoples in the enactment of law and policy reforms, and for consultation with their representative organizations at all levels, is a general feature of the Agreement.

5. In his letters of 29 March and 5 April 1995 to the President of the General Assembly and the President of the Security Council (A/49/879-S/1995/241; A/49/882-S/1995/256), the Secretary-General drew attention to the parties' decision that, while the Agreement as a whole would enter into force at the

signing of a final peace agreement, those aspects of it which related to human rights recognized in the Guatemalan legal order, including international treaties, conventions and other instruments to which Guatemala was a party, should be implemented immediately, and to the parties' request that the implementation of those aspects of the Agreement should be verified by MINUGUA.

6. The Agreement has raised considerable expectations among Guatemala's indigenous peoples and their representative organizations. The decision of the parties that MINUGUA should assume responsibility for immediate verification of those aspects of the Agreement which relate to human rights will require an expansion of the Mission's activities under its existing mandate. This will, in turn, create a greater workload for MINUGUA staff in all aspects of the Mission's mandate, including verification of possible violations, institution-strengthening activities, the promotion of international technical and financial cooperation and a culture of respect for human rights. The present report contains the assessment referred to by the Secretary-General in his letter of 5 April 1995 regarding additional resources required by MINUGUA in order to carry out these tasks.

II. HUMAN RIGHTS ASPECTS OF THE AGREEMENT

7. It is clearly the sense of the parties that only certain aspects of the present Agreement concern human rights, which have immediate force and application and are therefore subject to immediate verification by MINUGUA. These aspects relate to human rights that are already recognized in the Guatemalan legal order and would not require any reforms to allow for their effective realization. They are, inter alia, rights to equality of treatment and non-discrimination; such cultural rights as the right to use indigenous languages, to use indigenous dress and to practise indigenous forms of spirituality; such civil and political rights as the rights to practise traditional indigenous forms of social organization; and such economic and social rights as the right to hold land under traditional forms of tenure.

8. However, the majority of commitments in the Agreement relate to proposed constitutional and legal reforms or to administrative measures, in order to provide for the effective realization of rights that have been recognized as a general principle but have not been adequately regulated by law. Some commitments also relate to complex aspects of administrative reforms, including regionalization and the officialization of indigenous languages. While the actual implementation of those reforms must be seen as a long-term process, the Agreement represents a broad commitment by the Government to prepare for the reform process in close collaboration with representative indigenous organizations.

9. The Mission accordingly understands its mandate in the following light. On the one hand, it will have a certain number of immediate and direct verification tasks related to the specific aspects of the Agreement referred to in paragraph 7 above. On the other hand, it can assist both government agencies and representative organizations of indigenous peoples in the preparatory work referred to in paragraph 8, a role which both the Government and indigenous organizations have already indicated that they expect the Mission to play.

III. NEW ACTIVITIES TO BE UNDERTAKEN BY MINUGUA

10. Three main areas of activity by the Mission may be identified: the promotion and dissemination of the Agreement, additional human rights verification and tasks relating to the reform commitments included in the Agreement.

Promotion and dissemination

11. The Agreement provides for its widest possible dissemination, in Spanish as well as the principal indigenous languages, among indigenous communities and other sectors of Guatemalan society. In collaboration with government agencies and indigenous institutions and organizations, MINUGUA will seek international assistance through the Trust Fund for the Guatemala Peace Process to ensure that the Agreement is translated and disseminated. The regional offices and sub-offices will, in turn, seek to promote knowledge and discussion of the Agreement at the local level.

Additional human rights verification activities

12. Since its inception, MINUGUA has aimed to adapt its verification methods to the particular needs of indigenous people. It will now be necessary to strengthen the Mission's capacity to undertake its activities in a more systematic way, in compliance with the Agreement, in consultation with the Government and such agencies as the Counsel for Human Rights, and with indigenous organizations. Initial steps to be taken by MINUGUA will include revising the guidelines in its verification manual, holding training programmes to provide observers with specific knowledge of indigenous rights and values, and deploying additional observers where they are most required.

13. A further task of the Mission's regional offices and sub-offices will be to follow up on the progress made in establishing and reinforcing local participatory mechanisms for the defence of indigenous rights. In the Agreement, the Government has committed itself to the effective protection of indigenous rights by promoting the creation of legal offices for the defence of those rights and the establishment of "popular law offices" to provide free legal assistance to persons of limited economic means in municipalities in which indigenous communities are prevalent. The Mission will provide specific assistance in the creation of such mechanisms, in accordance with requests from the Government, local authorities or indigenous organizations.

Tasks relating to the reform commitments

14. Throughout the Agreement, distinctions are drawn between areas where the Government commits itself to undertaking administrative measures and reforms and areas where it will promote and provide the impetus for reforms through Congress. The entire process of constitutional, legal and administrative reforms can be expected to last for a number of years, requiring careful preparation and consultation with indigenous organizations. At the same time it is possible for the Government to determine priorities, in terms of the urgency with which it will address its many commitments.

15. As in the case of the Comprehensive Agreement on Human Rights, institution-strengthening will be a key factor for the successful implementation of the present Agreement. The Mission's task is to provide support to the initiatives undertaken by the Government to prepare the ground for constitutional, legal and administrative reforms, placing particular emphasis on institutional arrangements to this effect. It is therefore important that the Mission reinforce its technical expertise in the field of indigenous rights.

16. The Mission expects to undertake these activities in collaboration with agencies and programmes of the United Nations system, within their specialized areas of competence. It must be prepared and equipped to assume its role in preparing an overall strategy for technical assistance and in identifying the tasks that can be assumed by the different agencies and programmes in facilitating the verification process. MINUGUA will thus prepare a comprehensive strategy document in consultation with government agencies, representative indigenous organizations, United Nations agencies and programmes, regional financial institutions and bilateral donor agencies. Under the Comprehensive Agreement on Human Rights, MINUGUA has created a Joint Unit with UNDP in order to maximize the fulfilment of the institution-building part of its mandate. Under the Agreement, similar steps have been taken to expand the purview of activities of the Joint Unit.

IV. CONTEXT IN WHICH THE MISSION IS OPERATING AND ADDITIONAL RESOURCES REQUIRED

17. Since initiating its activities in November 1994, MINUGUA has requested no increases in its staffing budget. None the less, the experience obtained during its first six months regarding the human rights situation, field conditions and the workload of the regional offices and sub-offices has led the Mission to identify several serious staffing inadequacies, which should be corrected if it is to carry out effectively both its verification and institution-building activities.

18. A first corrective step was taken in May 1995 when it was decided to increase the number of military liaison officers by seven, while simultaneously reducing the total of civilian police observer posts by the same number. The original authorized strength of military liaison officers had proved insufficient to cover duties in all regional offices and sub-offices. The change had no financial implications.

19. However, the complex political context in which the Mission is operating, the growing number of human rights cases brought to its attention and the extra verification, institution-building and promotion tasks resulting from the Agreement described above now require an increase in MINUGUA's staffing table and related expenditures. The requests set out below represent the minimum additional resources required to enable the Mission to function adequately.

Indigenous Affairs Unit

20. The present budget provides for only a single post assigned to indigenous affairs, that of the Adviser to the Director of Mission. This is no longer

sufficient. MINUGUA requires that the Adviser now head an Indigenous Affairs Unit, within the Office of the Director of Mission, which would comprise three additional Professionals and one General Service support staff member. The Professionals would follow those aspects of the Agreement relating to political participation and institutional reform and devise participatory mechanisms in consultation with indigenous organizations. They would assist the Verification Branch and participate in the verification of cases as required and deal with requests for technical assistance projects, particularly those arising from the joint commissions. In addition, they would supervise the specialized training of observers in indigenous rights and their deployment to the field.

21. The new Unit will also require one short-term international consultant to prepare the strategy paper referred to in paragraph 16 above.

Human rights observers and legal officers (United Nations Volunteers)

22. MINUGUA began its verification tasks with 72 human rights observers and legal officers provided by the United Nations Volunteers (UNV) programme. Deployed throughout Guatemala under the supervision of regional coordinators, they form the core of the Mission's field personnel and are performing with professionalism and dedication. None the less, experience has shown that their number is insufficient. The number of complaints of alleged human rights violations brought to MINUGUA's regional offices and sub-offices has risen sharply. In addition, UNVs have had to undertake additional tasks, such as education and promotion and liaison with state agencies and non-governmental organizations. There is also a high turn-over of UNVs owing to the difficult field conditions, long working hours and better-paying job opportunities elsewhere. This last factor has resulted in a loss of impetus in the Mission's work, since new recruits have to be trained and require time to become accustomed to the terrain.

23. In order to meet its field obligations fully, MINUGUA requires an additional 26 UNV human rights observers and legal officers. Thirteen of these would be deployed (one to each field office), in order to reinforce existing human rights verification teams. The remaining 13 would receive training in indigenous rights, following which they would also be deployed, one to each field office, where they would effectively become the Mission's focal points for indigenous affairs. Under the coordination of the regional coordinator and with the guidance of the Indigenous Affairs Unit, they would advise the regional offices on indigenous rights, verify the situation and application of those rights, maintain regular contacts with local indigenous organizations, authorities and communities, and implement the Mission's policies on indigenous affairs at the local level.

24. In conformity with the terms of the Comprehensive Programme of Action for the International Decade of the World's Indigenous People and with the spirit of the Agreement, the Mission will make every effort to ensure that some of the new posts are filled by indigenous people with professional experience of comparable situations in other countries.

Human rights education and promotion officers (United Nations Volunteers)

25. Although the dissemination and promotion of the Comprehensive Agreement on Human Rights is one of the Mission's key tasks, shortage of staff has so far allowed only sporadic attention to be devoted to this issue. The Mission's additional responsibilities for the promotion of indigenous rights call for a strengthening of its education and promotion capacity in its regional offices and sub-offices. The Mission requires eight UNVs as human rights education and promotion officers, one to be deployed to each region. Their work will be coordinated by its Education and Promotion Unit, which, in conjunction with the Indigenous Affairs Unit, will design a comprehensive training programme aimed at indigenous leaders, civil and military authorities and non-governmental organizations, and including both written and audio-visual materials, preferably in the principal indigenous languages.

Local indigenous interpreters

26. In order to assist in the dissemination of the Agreement and the verification of the commitments contained therein, the Mission will require local indigenous interpreters to be available to its offices. On the basis of experience of the linguistic and geographical characteristics of the areas in which the Mission is deployed, it is estimated that a pool of 22 indigenous interpreters will be required to cover the same number of indigenous languages. As their services will not be required on a full-time basis, provision is made in the budget for 22 interpreters working on a half-time basis.

Political affairs officers

27. The Mission has been greatly handicapped by the absence of a political adviser. This need becomes more urgent, as 1995 is an electoral year in Guatemala and in 1996 the Mission will have to develop links with a new Government. Even without these factors, the maintenance of contacts between the Mission and various significant social and political sectors such as Congress and the Assembly for Civil Society, and private-sector organizations is crucial to its work. The Mission requires a political adviser who will monitor political developments and advise the Director on their possible impact on the Mission's work.

28. The past six months have highlighted the need for additional political affairs officers in the field. MINUGUA's original staffing table made provision for eight political affairs officers, one to be assigned to each regional office. In addition to their political work, they were to deputize for the regional coordinators when these were absent. No special provisions were made for heading the five regional sub-offices (Barillas, Cantabal, Escuintla, Nebaj and San Marcos) as it was assumed that UNVs could take on those functions. Experience has proved this not to be the case. The complexity of the tasks entrusted to the sub-offices, their considerable distance from parent offices, the supervisory abilities required, added to regulations that stipulate that certain administrative and financial tasks may only be undertaken by United Nations staff members made it impossible to assign the direction of sub-offices to UNVs. The Mission had to reassign political affairs officers to head the sub-offices, thereby leaving regional coordinators without much-needed political

support and a second-in-charge. To correct this situation, MINUGUA requires an additional six political affairs officers - five would replace those now heading the regional sub-offices and the sixth would reinforce the Guatemala City regional office, which has the largest verification responsibility in the country, both in terms of geographical area and the volume and complexity of the cases followed.

United Nations security officers

29. The two security officer posts initially authorized have proved insufficient in the prevailing security situation in Guatemala. A mission recently dispatched by the United Nations Security Coordinator to assess MINUGUA's requirements has recommended enhanced security measures, including the addition of three United Nations security officers.

30. MINUGUA's requirements for additional resources are estimated at approximately US$ 1.8 million for the six months following the end of the current mandate period.

United Nations Mission for the Verification of Human Rights and of Compliance with the Commitments of the Comprehensive Agreement on Human Rights in Guatemala
Regional boundary
Regional office
Subregional office
MINUGUA headquarters
MEXICO
BELIZE
HONDURAS
EL SALVADOR
PACIFIC OCEAN
Gulf of Honduras
PETEN
SANTA ELENA
HUEHUETENANGO
QUICHE
ALTA VERAPAZ
IZABAL
BAJA VERAPAZ
EL PROGRESO
ZACAPA
CHIQUIMULA
GUATEMALA
SOLOLA
QUETZALTENANGO
SAN MARCOS
ESCUINTLA
SANTA ROSA
JUTIAPA
Sierra de los Cuchumatanes
Sierra de Chamá
Sierra de las Minas
Lago de Izabal
GUATEMALA
International boundary
Department boundary
National capital
Department capital
Pan American highway
Road
Railroad
Airport